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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,551	02/07/2002	Garth R. Andrus	12587-004001	3452
26212	7590	10/18/2006	EXAMINER	
FISH & RICHARDSON P.C. P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			OUELLETTE, JONATHAN P	
			ART UNIT	PAPER NUMBER
			3629	

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/072,551

Applicant(s)

ANDRUS ET AL.

Examiner

Jonathan Ouellette

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 August 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4,6,7,13,16-18,22,23,26-28,32,33,36-38 and 42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6,7,13,16-18,22,23,26-28,32,33,36-38 and 42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☒ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. 20060630.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Response to Amendment*

1. Claims 3, 5, 8-11, 14, 15, 19-21, 24, 25, 29-31, 34, 35, 39-41 have been cancelled, and Claims 42 has been added; therefore, Claims 1, 2, 4, 6, 7, 13, 16-18, 22, 23, 26-28, 32, 33, 36-38, and 42 are currently pending in application 10/072,551.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1, 2, 4, 6, 7, 13, 16-18, 22, 23, 26-28, 32, 33, and 36-38 are rejected under 35 U.S.C. 102(e) as being anticipated by McFarlane et al. (US 2002/0111887 A1).
4. As per independent Claims 1, 12, 22, and 32, McFarlane discloses a method (system, apparatus, computer-readable medium) comprising: obtaining human performance related data from at least one remotely located application service provider (Para 0020-0022, Fig.2, Import Log Files); organizing the data into a plurality of metrics, the plurality of metrics including non-user-modifiable individual, group and enterprise workforce metrics each comprising an indicator of individual, group and enterprise performance toward

predetermined workforce business goals, respectively, and user-modifiable individual, group and enterprise metrics each comprising an indicator of individual, group and enterprise performance toward personalized business goals, respectively, the plurality of metrics organized by metric category (Para 0028, Fig.2, Fig.6, Para 0045); adding a user-modifiable individual, group or enterprise metric to the plurality of metrics (Fig.7, collection of organization data); displaying a scorecard section operable to view the plurality of non-user-modifiable individual, group or enterprise workforce metrics; displaying a metric section operable to view the user-modifiable individual, group and enterprise metrics (Para 0024, reports); displaying an intentions section operable to register a personalized business goal influenced by at least one of the plurality of metrics (Para 0010-0011, Para 0022-0023); preparing an interpretation of the data organized into the plurality of metrics (Para 0011, Para 0023, Summary table compiled), the interpretation including a recommended action or an estimated cost savings (Para 0046 – identifying improper or excessive use of resources [equates to company costs], by comparing total usage to no usage); displaying an analysis section operable to graphically display individual, group or enterprise performance of a metric category in comparison to an industry benchmark, and to display a list of metrics in the metric category and the recommended action or estimated cost savings (Para 0011, Para 0023, top 10% usage color-coded red, etc.); and generating a survey based upon the recommended action (survey not necessary if estimated cost savings generated – see or choice above).

5. As per Claims 2, 13, 23, and 33, McFarlane discloses wherein obtaining human performance related data comprises obtaining the data from at least one locally stored application (Para 0020-0022, log files from servers could be local or external).
6. As per Claims 4, 17, 27, and 37, McFarlane discloses wherein organizing the data into at least one metric comprises maintaining a historical record of data organized into at least one metric (Para 0026).
7. As per Claims 6, 16, 26, and 36, McFarlane discloses herein preparing the interpretation comprises identifying if a predetermined set point value for the data organized into at least one metric has been exceeded (Para 0023, top 10% usage color-coded).
8. As per Claims 7, 18, 28, and 38, McFarlane discloses wherein preparing the interpretation comprises comparing a value of the data with a value of a predetermined goal (Para 0011, Para 0023, top 10% usage color-coded red, etc.).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
10. **Claim 42** is rejected under 35 U.S.C. 103 as being unpatentable over McFarlane.
11. As per Claim 42, McFarlane does not expressly show wherein the at least one of the plurality of metrics corresponds to a number of new customers, an employee turnover

rate, a customer satisfaction rating, a non-deployed percentage, a development rate, a leading edge technology sales, a use of online development, a percent increase in global sales, and/or a proposed project revenue.

12. However these differences are only found in the nonfunctional descriptive data and are not functionally involved in the steps recited. The human performance data accumulation system would be performed regardless of the type of metric data collected/used. Thus, this descriptive data will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).
13. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have collected a plurality of different metric types, to include: the number of new customers, an employee turnover rate, a customer satisfaction rating, a non-deployed percentage, a development rate, a leading edge technology sales, a use of online development, a percent increase in global sales, and/or a proposed project revenue, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

#### ***Response to Arguments***

14. Applicant's arguments filed 8/11/2006, with respect to Claims 1, 2, 4, 6, 7, 13, 16-18, 22, 23, 26-28, 32, 33, and 36-38, have been fully considered but are not persuasive. The rejection will remain as **FINAL**, based on the cited prior art.

15. Applicant's amendment necessitated the new ground(s) of rejection for Claim 42, presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
16. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.
17. As per the arguments made that the cited prior art fails to teach or disclose the newly amended subject matter, the Applicant is directed to the revised rejection above regarding the amended claims.

#### ***Conclusion***

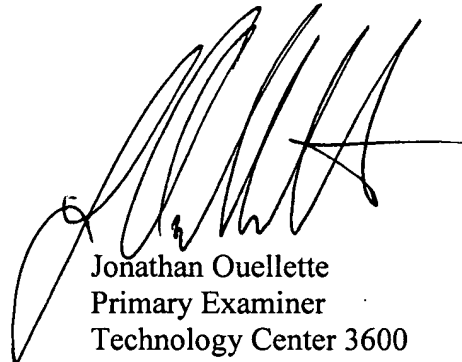
18. Additional Literature has been referenced on the attached PTO-892 form, and the Examiner suggests the applicant review these documents before submitting any amendments.
19. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan Ouellette whose telephone number is (571) 272-

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6807. The examiner can normally be reached on Monday through Thursday, 8am - 5:00pm.

20. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone numbers for the organization where this application or proceeding is assigned (571) 273-8300 for all official communications.
21. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Office of Initial Patent Examination whose telephone number is (703) 308-1202.

October 6, 2006



Jonathan Ouellette  
Primary Examiner  
Technology Center 3600